

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
COMPLAINTS AGAINST VARIOUS) File No. EB-03-IH-0110
BROADCAST LICENSEES)
REGARDING THEIR AIRING OF)
THE "GOLDEN GLOBE AWARDS")
PROGRAM ¹)
)

MEMORANDUM OPINION AND ORDER

Adopted: October 3, 2003

Released: October 3, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, issued pursuant to Section 0.111(a)(7) of the Commission's rules,² we deny complaints received from the Parents Television Council and from certain individuals who have alleged that various television station licensees aired program material during the "Golden Globe Awards" program on January 19, 2003, that violates the federal restrictions regarding the broadcast of obscene and indecent material.³

II. BACKGROUND

2. The complainants allege that the licensees named in their respective complaints aired the "Golden Globe Awards" program, during which the performer Bono uttered the phrase "this is really, really, fucking brilliant," or "this is fucking great."⁴ The complainants contend

¹ This *Order* denies 234 complaints that the Commission received concerning broadcasts of this program. Of these, 217 were from individuals associated with Parents Television Council. *See, e.g.*, postcard complaint against Multimedia Entertainment, Inc., licensee of Station WGRZ-TV, Buffalo, New York, from Marsha A. Ashton to Chief, Investigations and Hearings Division, Enforcement Bureau. The Commission received multiple complaints concerning some of the stations that aired the material at issue. A list of the stations and licensees that are the subject of the complaints is provided as an appendix to this *Order*.

² 47 C.F.R. § 0.111(a)(7) (2002).

³ *See* 47 U.S.C. § 503(b) (2002), 18 U.S.C. § 1464 (2002), and 47 C.F.R. § 73.3999 (2002).

⁴ The complaints vary in their characterization of Bono's comments, and our analysis here applies equally to both versions.

that such material is either obscene and/or indecent, and they request that the Commission levy sanctions against the licensees for the broadcast of the subject material.

III. DISCUSSION

3. The Federal Communications Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission's rules and applicable statutory provisions concerning the operation of those stations. The Commission's role in overseeing program content is very limited. The First Amendment to the United States Constitution and section 326 of the Communications Act of 1934, as amended, (the "Act") prohibit the Commission from censoring program material and from interfering with broadcasters' freedom of expression.⁵ The Commission does, however, have the authority to enforce statutory and regulatory provisions restricting indecency and obscenity. Specifically, it is a violation of federal law to broadcast obscene or indecent programming. Title 18 of the United States Code, Section 1464 prohibits the utterance of "any obscene, indecent or profane language by means of radio communication."⁶ In addition, section 73.3999 of the Commission's rules provides that radio and television stations shall not broadcast obscene material at any time, and shall not broadcast indecent material during the period 6 a.m. through 10 p.m.⁷ The Commission may impose a monetary forfeiture, pursuant to Section 503(b)(1) of the Act,⁸ upon a finding that a licensee has broadcast indecent material in violation of 18 U.S.C. § 1464 and section 73.3999 of the rules.

A. Indecency Analysis

4. Any consideration of government action against allegedly indecent programming must take into account the fact that such speech is protected under the First Amendment.⁹ The federal courts consistently have upheld Congress's authority to regulate the broadcast of indecent speech, as well the Commission's interpretation and implementation of the governing statute.¹⁰ Nevertheless, the First Amendment is a critical constitutional limitation that demands that, in indecency determinations, we proceed cautiously and with appropriate restraint.¹¹

⁵ U.S. CONST., amend. I; 47 U.S.C. § 326 (2002).

⁶ 18 U.S.C. § 1464.

⁷ See 47 C.F.R. § 73.3999.

⁸ See 47 U.S.C. § 503(b)(1).

⁹ U.S. CONST., amend. I; See *Action for Children's Television v. FCC*, 852 F.2d 1332, 1344 (D.C. Cir. 1988) ("ACT I").

¹⁰ 18 U.S.C. § 1464; *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). See also *ACT I*, 852 F.2d at 1339; *Action for Children's Television v. FCC*, 932 F.2d 1504, 1508 (D.C. Cir. 1991), *cert. denied*, 503 U.S. 914 (1992) ("ACT II"); *Action for Children's Television v. FCC*, 58 F. 3d 654 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1043 (1996) ("ACT III").

¹¹ *ACT I*, 852 F.2d at 1344 ("Broadcast material that is indecent but not obscene is protected by the First Amendment; the FCC may regulate such material only with due respect for the high value our Constitution places on freedom and choice in what people may say and hear.") See also *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813-15 (2000).

5. The Commission defines indecent speech as language that, in context,¹² depicts or describes sexual or excretory activities or organs in terms patently offensive as measured by contemporary community standards for the broadcast medium.¹³

Indecency findings involve at least two fundamental determinations. First, the material alleged to be indecent must fall within the subject matter scope of our indecency definition—that is, the material must describe or depict sexual or excretory organs or activities. . . . Second, the broadcast must be *patently offensive* as measured by contemporary community standards for the broadcast medium.¹⁴

As a threshold matter, the material aired during the “Golden Globe Awards” program does not describe or depict sexual and excretory activities and organs. The word “fucking” may be crude and offensive, but, in the context presented here, did not describe sexual or excretory organs or activities. Rather, the performer used the word “fucking” as an adjective or expletive to emphasize an exclamation. Indeed, in similar circumstances, we have found that offensive language used as an insult rather than as a description of sexual or excretory activity or organs is not within the scope of the Commission’s prohibition of indecent program content.¹⁵

6. Moreover, we have previously found that fleeting and isolated remarks of this nature do not warrant Commission action.¹⁶ Thus, because the complained-of material does not fall within the scope of the Commission’s indecency prohibition, we reject the claims that this program content is indecent, and we need not reach the second element of the indecency analysis.

B. Obscenity Analysis

¹² The use of specific potentially offensive words is not in and of itself indecent. *Industry Guidance on the Commission’s Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency (“Indecency Policy Statement”)*, 16 FCC Rcd 7999, 8002 ¶9 (“In determining whether material is patently offensive, the *full context* is critically important. It is not sufficient to know that explicit sexual terms or descriptions were used. . . , citing *WPBN/WTOM License Subsidiary, Inc.*, 15 FCC Rcd 1838, 1841 (2000), *Infinity Broadcasting Corp.*, 3 FCC Rcd 930, 931-32 (1987), *aff’d in part, vacated in part, remanded sub nom ACT I*, 852 F.2d 1332 (D.C. Cir. 1988)(subsequent history omitted). See *Peter Branton*, 6 FCC Rcd 610 (1991)(subsequent history omitted)(no language is *per se* indecent).

¹³ *Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705 (1987)(subsequent history omitted)(citing *Pacifica Foundation*, 56 FCC 2d 94, 98 (1975), *aff’d sub nom. FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)).

¹⁴ *Indecency Policy Statement*, 16 FCC Rcd 7999, 8002 ¶¶ 7-8 (2001) (*emphasis in original*).

¹⁵ *Id.* See, e.g., *Entercom Buffalo License, LLC (WGR(AM))*, 17 FCC Rcd 11997, 11999-12000 ¶¶ 7, 9-10 (EB 2002). See also, *Peter Branton*, 6 FCC Rcd at 610.

¹⁶ See, e.g., *L.M. Communications of South Carolina, Inc. (WYBB(FM))*, 7 FCC Rcd 1595 (MMB 1992)(a fleeting and isolated utterance (“[t]he hell I did, I drove the mother-fucker. . .”) within the context of live and spontaneous programming not actionable). See also *Industry Guidance On the Commission’s Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency*, 16 FCC Rcd 7999, 8008-09 ¶18 (2001).

6. To be obscene, material must meet a three-prong test: (1) the average person, applying contemporary community standards, must find that the material, as a whole, appeals to the prurient interest; (2) the material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and (3) the material, taken as a whole, must lack serious literary, artistic, political or scientific value.¹⁷ Applying that test, we find that the material broadcast during the “Golden Globe Awards” program was not obscene. The use of specific words, including expletives or other “four letter words” does not render material obscene.¹⁸ Moreover, the complained-of material does not depict or describe sexual conduct and thus does not meet the obscenity standard under *Miller v. California*.¹⁹ Because the broadcast does not meet the obscenity standard under *Miller*, we deny the complaints alleging that the broadcast was obscene.

IV. CONCLUSION

7. In view of the foregoing, we conclude that the various licensees that aired the “Golden Globe Awards” program on January 19, 2003, did not violate the law, and, therefore, no action is warranted.

V. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 0.111(a)(7) of the Commission’s rules, 47 C.F.R. § 0.111(a)(7), that the complaints filed against the broadcasts of the “Golden Globe Awards” program on January 19, 2003, by the licensees listed in the attached appendix are hereby DENIED.

9. IT IS FURTHER ORDERED, that a copy of this *Memorandum Opinion and Order* shall be sent by Certified Mail Return Receipt Requested to The Parents Television Council, 707 Wilshire Boulevard, Los Angeles, California 90017.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁷ See *Miller v. California*, 413 U.S. 15, 24 (1973).

¹⁸ See *WGBH Educational Foundation (WGBH-TV)*, 69 FCC 2d 1250, 1253-54 (1978)(offensive language, including expletives, does not fit within the established definition of obscenity).

¹⁹ See *Miller v. California*, 413 U.S. at 18-19, 24.

APPENDIX

CALL SIGN	COMMUNITY OF LICENSE	LICENSEE
KALB-TV	Alexandria, LA	Media General Communications, Inc.
KARE(TV)	Minneapolis, MN	Multimedia Holdings Corp.
KARK-TV	Little Rock, AR	KARK-TV, Inc.
KATV(TV)	Little Rock, AR	KATV, LLC
KBTV-TV	Port Arthur, TX	Nexstar Broadcast of Beaumont/Port Arthur, L.L.C.
KCBD(TV)	Lubbock, TX	LIBCO, Inc.
KCEN-TV	Temple, TX	Channel 6, Inc.
KCNC-TV	Denver, CO	CBS Television Stations Inc.
KCRA-TV	Sacramento, CA	KCRA Hearst-Argyle Television, Inc.
KETK-TV	Jacksonville, TX	KETK Licensee L.P.
KFDM-TV	Beaumont, TX	Freedom Broadcasting of Texas, Inc.
KFOR-TV	Oklahoma City, OK	New York Times Management Services
KGW(TV)	Portland, OR	King Broadcasting Company
KHAS-TV	Hastings, NE	Greater Nebraska Television, Inc..
KING-TV	Seattle, WA	King Broadcasting Company
KKCO(TV)	Grand Junction, CO	Eagle III Broadcasting, LLC
KNBC(TV)	Los Angeles, CA	NBC Subsidiary (KNBC-TV), Inc.
KNSD(TV)	San Diego, CA	Station Venture Operations, LP
KOAA-TV	Pueblo, CO	Sangre De Cristo Communications, Inc.
KOB-TV	Albuquerque, NM	KOB-TV, LLC
KPNX(TV)	Mesa, AZ	Multimedia Holdings Corporation
KPRC-TV	Houston, TX	Post-Newsweek Stations, Houston, LP
KRBC-TV	Abilene, TX	Mission Broadcasting, Inc.
KRIS-TV	Corpus Christi, TX	KVOA Communications, Inc.
KTGF(TV)	Great Falls, MT	MMM License LLC

KWBW(TV)	Salinas, CA	Hearst-Argyle Stations, Inc.
KSDK(TV)	St. Louis, MO	Multimedia KSDK, Inc.
KSHB-TV	Kansas City, MO	Scripps Howard Broadcasting Company
KSNF(TV)	Joplin, MO	Nexstar Broadcasting of Joplin, L.L.C.
KTEN(TV)	Ada, OK	Channel 49 Acquisition Corp.
KTIV(TV)	Sioux City, IA	KTIV Television, Inc.
KUSA-TV	Denver, CO	Multimedia Holdings Corp.
KWES-TV	Odessa, TX	Midessa Television Company
KWWL(TV)	Waterloo, IA	Raycom America, Inc.
KXAS-TV	Fort Worth, TX	Station Venture Operations, LP
KYTV(TV)	Springfield, MO	KY3, Inc.
WANE-TV	Fort Wayne, IN	Indiana Broadcasting, LLC
WAVE(TV)	Louisville, KY	LIBCO, Inc.
WBBH-TV	Fort Myers, FL	Waterman Broadcasting Corp. of Florida
WBOY-TV	Clarksburg, WV	West Virginia Media Holdings, LLC
WBRE-TV	Wilkes-Barre, PA	Nexstar Broadcasting of Northeastern Pennsylvania, L.L.C.
WCAU(TV)	Philadelphia, PA	NBC Subsidiary (WCAU-TV), L.P.
WCNC-TV	Charlotte, NC	WCNC-TV, Inc.
WCSH(TV)	Portland, ME	Pacific and Southern Company, Inc.
WCYB-TV	Bristol, VA	Appalachian Broadcasting Corp.
WDIV-TV	Detroit, MI	Post-Newsweek Stations, Michigan, Inc.
WDSU(TV)	New Orleans, LA	New Orleans Hearst-Argyle Television, Inc.
WESH(TV)	Daytona Beach, FL	Orlando Hearst-Argyle Television, Inc.
WFIE(TV)	Evansville, IN	LIBCO, Inc.
WFLA-TV	Tampa, FL	Media General Communications, Inc.

WFMJ-TV	Youngstown, OH	WFMJ Television, Inc.
WGAL(TV)	Lancaster, PA	WGAL Hearst-Argyle Television, Inc.
WHDH-TV	Boston, MA	WHDH-TV
WHGH-TV	Thomasville, GA	H.G.H. Investment Corp.
WHEC-TV	Rochester, NY	WHEC-TV, LLC
WHO-TV	Des Moines, IA	New York Times Management Services
WILX-TV	Onondaga, MI	Gray Midamerica TV Licensee Corp.
WJAR(TV)	Providence, RI	Outlet Broadcasting, Inc.
WJFW-TV	Rhineland, WI	Northland Television, Inc.
WKYC-TV	Cleveland, OH	WKYC-TV, Inc.
WLWT(TV)	Cincinnati, OH	Ohio/Oklahoma Hearst-Argyle TV, Inc.
WMAQ-TV	Chicago, IL	NBC Subsidiary (WMAQ-TV), Inc.
WMC-TV	Memphis, TN	Raycom America, Inc.
WMFE-TV	Orlando, FL	Community Communications, Inc.
WMGT(TV)	Stillwater, MN	Endurance Broadcasting, LLC
WMTV(TV)	Madison, WI	Gray Midamerica TV Licensee Corp.
WNBC(TV)	New York, NY	National Broadcasting Company, Inc.
WNDU-TV	South Bend, IN	Michiana Telecasting Corp.
WNYT(TV)	Albany, NY	WNYT-TV, LLC
WOAI-TV	San Antonio, TX	CCB Texas Licenses, L.P.
WOOD-TV	Grand Rapids, MI	WOOD License Company, LLC
WOWT-TV	Omaha, NE	Gray Midamerica TV Licensee Corp.
WPMI(TV)	Mobile, AL	Clear Channel Broadcasting Licenses, Inc.
WPXI(TV)	Pittsburgh, PA	WPXI-TV Holdings, Inc.
WRC-TV	Washington, DC	NBC Subsidiary (WRC-TV), Inc.
WRCB-TV	Chattanooga, TN	Sarkes Tarzian, Inc.
WRIC-TV	Petersburg, VA	Young Broadcasting of Richmond, Inc.

WSAV-TV	Savannah, GA	Media General Communications, Inc.
WSAZ-TV	Huntington, WV	Emmis Television License Corp.
WSFA(TV)	Montgomery, AL	Libco, Inc.
WSMV-TV	Nashville, TN	Meredith Corp.
WTHR(TV)	Indianapolis, IN	Videoindiana, Inc.
WTMJ-TV	Milwaukee, WI	Journal Broadcast Corp.
WTVY(TV)	Dothan, AL	Gray Midamerica TV Licensee Corp.
WVLA(TV)	Baton Rouge, LA	Knight Broadcasting of Baton Rouge Lic. Corp.
WVTM-TV	Birmingham, AL	Birmingham Broadcasting (WVTM TV), Inc.
WWBT(TV)	Richmond, VA	Jefferson-Pilot Communications Company of Virginia
WWLP(TV)	Springfield, MA	WWLP Broadcasting, LLC
WXIA-TV	Atlanta, GA	Gannett Georgia, L.P.
WYFF(TV)	Greenville, SC	WYFF Hearst-Argyle Television, Inc.